

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

AR 15-01

DATE OF REFERRAL: March 4, 2015

DATES OF NOTIFICATION: March 9, 2015

DATE OF LAST RESPONSE: None

DATE ACTIVATED: May 11, 2015

ELECTION CYCLE: 2012

EXPIRATION OF SOL: 3/9/16 – 10/27/17

**SOURCE:**

INTERNALLY GENERATED

**RESPONDENTS:**

Joe Walsh for Congress Committee, Inc. and  
Helene M. Miller-Walsh in her official  
capacity as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30111(b)<sup>1</sup>  
52 U.S.C. § 30116(a)(1)(A)  
52 U.S.C. § 30116(f)  
11 C.F.R. § 104.16  
11 C.F.R. § 110.1  
11 C.F.R. § 110.9

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter was generated from a Commission audit of Joe Walsh for Congress Committee, Inc. ("Committee"), the principal campaign committee of Joseph "Joe" Walsh, a 2012 House candidate in the 8th Congressional District of Illinois. On February 12, 2015, the Commission approved the Proposed Final Audit Report regarding the Committee's activity from

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

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1 January 1, 2011, through December 31, 2012 ("Audit Report"),<sup>2</sup> which included a finding that  
2 the Committee received excessive contributions totaling \$92,325 from 29 individuals. This  
3 finding was based on the Committee's failure to resolve the excessive portions of contributions  
4 by issuing reattribution or redesignation letters to the contributors or issuing timely refunds.

5 The Audit Division referred the Committee to the Office of the General Counsel  
6 ("OGC") for possible enforcement action.<sup>3</sup> OGC notified the Committee of the Referral and  
7 gave it an opportunity to respond, but the Committee did not file a response. Based on the  
8 available information, we recommend that the Commission open a MUR, find reason to believe  
9 that the Committee and Helene M. Miller-Walsh in her official capacity as treasurer violated  
10 52 U.S.C. § 30116(f), and enter into pre-probable cause conciliation with them.

## 11 II. FACTUAL AND LEGAL ANALYSIS

12 During the 2012 election cycle, an authorized committee was limited to receiving a total  
13 of \$2,500 per election from any one person.<sup>4</sup> A primary and a general election are separate  
14 elections.<sup>5</sup> The Commission's regulations provide that if a committee receives a contribution  
15 that appears to exceed the contribution limits, the committee must either refund the contribution  
16 to the donor or deposit the contribution into its federal account and seek a reattribution or a  
17 redesignation of the excessive portion.<sup>6</sup> If, however, the committee does not receive a proper

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<sup>2</sup> See Final Audit Report of the Commission on Joe Walsh for Congress at 8 (January 1, 2011 – December 31, 2012), Attachment 1.

<sup>3</sup> See Memorandum from Patricia C. Orrock, Chief Compliance Officer, Federal Election Commission, to Lisa J. Stevenson, Deputy General Counsel-Law, Federal Election Commission (March 4, 2015) ("Referral").

<sup>4</sup> See 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(a)-(b), 110.9.

<sup>5</sup> See 52 U.S.C. § 30101(l)(A); 11 C.F.R. § 100.2(a)-(c).

<sup>6</sup> See 11 C.F.R. § 103.3(b)(3).

1 reattribution or redesignation within 60 days after receiving the contribution, it must refund the  
2 excessive portion to the donor.<sup>7</sup>

3 The Commission's regulations include procedures for reattributing or redesignating a  
4 contribution.<sup>8</sup> For example, a joint contribution may be attributed equally to each signatory on a  
5 negotiable instrument, and a committee may reattribute a portion of a joint contribution to  
6 another person on the negotiable instrument to avoid the contribution being excessive,<sup>9</sup>  
7 Similarly, a contributor may designate a contribution to a particular election, but a committee  
8 may ask a contributor to redesignate the contribution to another election to avoid it being  
9 excessive.<sup>10</sup> The committee must notify contributors of the proposed reattribution or  
10 redesignation in writing and inform them that they may request a refund of the excessive portion  
11 of the contribution instead.<sup>11</sup>

12 The audit fieldwork revealed that the Committee received \$92,325 in excessive  
13 contributions from 29 individuals.<sup>12</sup> The Audit staff informed the Committee's representative  
14 that \$71,125 of the excessive contributions could be reattributed or redesignated, albeit  
15 untimely.<sup>13</sup> The remaining \$21,200 could be neither reattributed nor redesignated, but needed to

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<sup>7</sup> See *Id.*

<sup>8</sup> See generally 11 C.F.R. § 110.1(b), (k).

<sup>9</sup> See 11 C.F.R. § 110.1(k)(2), (3)

<sup>10</sup> See 11 C.F.R. § 110.1(b)(2), (3), (5).

<sup>11</sup> See 11 C.F.R. §§ 110.1(b)(5), 110.1(k)(3).

<sup>12</sup> Audit Rpt. at 8.

<sup>13</sup> Audit Rpt. at 11. The Committee issued reattribution or redesignation letters for \$11,000 of the excessive contributions during the early stage of the audit. The Committee issued reattribution or redesignation letters for \$60,125 of the excessive contributions after the audit was completed.

1 be refunded to the contributors or disgorged to the U.S. Treasury.<sup>14</sup> The Audit staff also  
2 provided schedules of the apparent excessive contributions along with information about the  
3 necessary actions to resolve them.<sup>15</sup>

4 The Committee's representative informed the Audit staff that she would review the audit  
5 findings.<sup>16</sup> The Committee later untimely reattributed or redesignated \$71,125 of the excessive  
6 contributions. The Committee's representative also informed the Audit staff that the Committee  
7 did not have sufficient funds to refund or disgorge the remaining \$21,200 of excessive  
8 contributions, but that the Committee would disclose the \$21,200 as a debt on its Schedule D  
9 (Debts and Obligations).<sup>17</sup> The Committee, however, neither refunded nor disgorged the  
10 contributions, nor has it amended its reports to disclose the contributions as debts on its Schedule  
11 D (Debts and Obligations).<sup>18</sup> The Committee did not respond to the Referral.

12 Therefore, we recommend that the Commission open a MUR, find reason to believe that  
13 the Committee and Helene M. Miller-Walsh in her official capacity as treasurer violated  
14 52 U.S.C. § 30116(f) by knowingly accepting \$92,325 in excessive contributions from 29  
15 individuals, and enter into pre-probable cause conciliation with them.

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<sup>14</sup> *Id.*

<sup>15</sup> Audit Rpt. at 10.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Audit Rpt. at 11. The Commission's database shows no corresponding amendments to the Committee's 2012 disclosure reports. The Committee has not filed its 2015 April Quarterly Report, and the Reports Analysis Division issued a Request for Additional Information on May 1, 2015.  
<http://docquery.fec.gov/pdf/897/15330081897/15330081897.pdf>. The Committee did not respond.

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**IV. RECOMMENDATIONS**

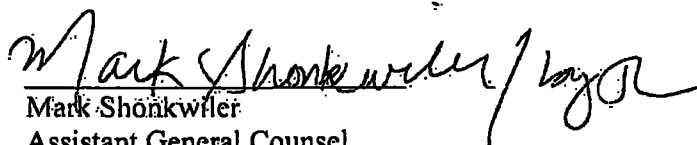
1. Open a MUR.
2. Find reason to believe Joe Walsh for Congress Committee, Inc. and Helene M. Miller-Walsh in her official capacity as treasurer violated 52 U.S.C. § 30116(f).
3. Approve the attached Factual and Legal Analyses.
4. Approve conciliation with Joe Walsh for Congress Committee, Inc. and Helene M. Miller-Walsh in her official capacity as treasurer prior to a finding of probable cause to believe.
- 5.


6. Approve the appropriate letter.

Daniel A. Petalas  
Associate General Counsel for Enforcement

6.29.15  
Date

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Kamau Philbert  
Attorney

Attachments:

(1) Final Audit Report — Joe Walsh for Congress Committee, Inc.



## Final Audit Report of the Commission on the Joe Walsh for Congress Committee, Inc. (January 1, 2011 – December 31, 2012)

### Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act<sup>1</sup> (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>2</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### About the Campaign (p. 2)

Joe Walsh for Congress Committee, Inc. is the principal campaign committee for Joe Walsh, Republican candidate for the U. S. House of Representatives from the state of Illinois, 8th District, and is headquartered in Lake Zurich, Illinois. For more information, see the Campaign Organization Chart, p. 2.

### Financial Activity (p. 2)

• Receipts	
o Contributions from Individuals	\$ 1,321,815
o Contributions from Political Committees	662,810
o Other Receipts	26,455
<b>Total Receipts</b>	<b>\$ 2,011,080</b>
• Disbursements	
o Operating Expenditures	\$ 1,858,014
o Loan Repayments <sup>3</sup>	13,400
o Contribution Refunds	22,650
o Other Disbursements	114,350
<b>Total Disbursements</b>	<b>\$ 2,008,414</b>

### Commission Findings (p. 3)

- Disclosure of Occupation/Name of Employer (Finding 1)
- Receipt of Contributions in Excess of the Limit (Finding 2)

### Additional Issue (p. 4)

- Disclosure of Occupation/Name of Employer – Best Efforts

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

<sup>2</sup> 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

<sup>3</sup> These repayments were for loans from the previous election cycle.



**Final Audit Report of the  
Commission on the Joe Walsh for  
Congress Committee, Inc.**

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(January 1, 2011 - December 31, 2012)



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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Joe Walsh for Congress Committee, Inc. (JWFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104 (formerly 2 U.S.C. §434). Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

### Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

### Audit Hearing

JWFC declined the opportunity for a hearing before the Commission on matters presented in this report.

## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	January 13, 2010
• Audit Coverage	January 1, 2011 – December 31, 2012
<b>Headquarters</b>	Lake Zurich, IL
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Nine (six checking and three savings)
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Helene M. Miller-Walsh
• Treasurer During Period Covered by Audit	Helene M. Miller-Walsh
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2011</b>	<b>\$ 21,891</b>
<b>Receipts</b>	
○ Contributions from Individuals	1,321,815
○ Contributions from Political Committees	662,810
○ Other Receipts	26,455
<b>Total Receipts</b>	<b>\$ 2,011,080</b>
<b>Disbursements</b>	
○ Operating Expenditures	1,858,014
○ Loan Repayments	13,400
○ Contribution Refunds	22,650
○ Other Disbursements	114,350
<b>Total Disbursements</b>	<b>\$ 2,008,414</b>
<b>Cash-on-hand @ December 31, 2012</b>	<b>\$ 24,557</b>

## **Part III Summaries**

### **Commission Findings**

#### **Finding 1. Disclosure of Occupation/Name of Employer**

A review of all contributions from individuals requiring itemization indicated that 285 contributions totaling \$334,146 lacked disclosure of occupation/name of employer. Furthermore, the Interim Audit Report stated that "best efforts" to obtain, maintain and submit information had not been sufficiently documented for these contributions. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC filed amended disclosure reports for 106 contributions totaling \$111,860 and materially complied with the Interim Audit Report recommendation.

The Commission approved a finding that during the period covered by the audit JWFC failed to disclose occupation/name of employer information for 106 contributions from individuals totaling \$111,860 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions. The Commission did not approve a finding for the remaining 179 contributions totaling \$222,286. As such, this matter is presented in the "Additional Issue" section. (For more details, see p. 5.)

#### **Finding 2. Receipt of Contributions in Excess of the Limit**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that JWFC received apparent excessive contributions from 29 individuals totaling \$92,325. These errors occurred as a result of JWFC not resolving the excessive portions of contributions by forwarding a presumptive letter to the contributor or issuing a refund in a timely manner. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC provided letters sent to contributors for contributions totaling \$60,125 that were eligible for presumptive redesignation/retribution. The Audit staff considers the \$60,125 as excessive contributions that have been resolved untimely. JWFC did not address the excessive contributions resolvable only by refund to contributors or the U.S. Treasury totaling \$21,200 nor did it file amended reports to disclose these contributions on Schedule D (Debts and Obligations).

The Commission approved a finding that JWFC received excessive contributions totaling \$92,325. (For more details, see p. 7.)

## **Additional Issue**

### **Disclosure of Occupation/Name of Employer – Best Efforts**

As detailed in Finding 1 above, the Audit staff's review of all contributions from individuals requiring itemization indicated that 285 contributions totaling \$334,146 lacked disclosure of occupation/name of employer. Furthermore, the Interim Audit Report stated that "best efforts" to obtain, maintain and submit information had not been sufficiently documented for these contributions. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC filed amended disclosure reports for 106 contributions totaling \$111,860 and materially complied with the Interim Audit Report recommendation.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding relating to JWFC's "best efforts" for the remaining 179 contributions totaling \$222,286. Pursuant to Commission Directive 70,<sup>4</sup> this matter is discussed in the "Additional Issue" section. (For more detail, see p. 12.)

<sup>4</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf)

## Part IV

### Commission Findings

#### **Finding 1. Disclosure of Occupation/Name of Employer**

##### **Summary**

A review of all contributions from individuals requiring itemization indicated that 285 contributions totaling \$334,146 lacked disclosure of occupation/name of employer. Furthermore, the Interim Audit Report stated that "best efforts" to obtain, maintain and submit information had not been sufficiently documented for these contributions. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC filed amended disclosure reports for 106 contributions totaling \$111,860 and materially complied with the Interim Audit Report recommendation.

The Commission approved a finding that during the period covered by the audit JWFC failed to disclose occupation/name of employer information for 106 contributions from individuals totaling \$111,860 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions. The Commission did not approve a finding for the remaining 179 contributions totaling \$222,286. As such, this matter is presented in the "Additional Issue" section.

##### **Legal Standard**

- A. Itemization Required for Contributions from Individuals.** An authorized candidate committee must itemize any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when combined with other contributions from the same contributor. 52 U.S.C. §30104(b)(3)(A) (formerly 2 U.S.C. §434(b)(3)(A)).
- B. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the following information:
- the contributor's full name and address (including zip code);
  - the contributor's occupation and the name of his or her employer;
  - the date of receipt (the date the committee received the contribution);
  - the amount of the contribution; and
  - the calendar year-to-date total of all contributions from the same individual. 52 U.S.C. §30104(b)(3)(A) (formerly 2 U.S.C. § 434(b)(3)(A)) and 11 CFR §§ 100.12 and 104.3(a)(4)(i).
- C. Best Efforts Ensure Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will

be considered in compliance with the Act. 52 U.S.C. §30102(i) (formerly 2 U.S.C. § 432(i)) and 11 CFR §104.7(a).

**D. Definition of Best Efforts.** The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria.

- All written solicitations for contributions included:
  - a clear request for the contributor's full name, mailing address, occupation, and name of employer; and
  - the statement that such reporting is required by Federal law.
- Within 30 days of receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR § 104.7(b).

## **Facts and Analysis**

### **A. Facts**

A review of all itemized contributions from individuals indicated that 285 contributions totaling \$334,146, or 29 percent of the dollar value of individual contributions required to be itemized by JWFC, lacked disclosure of occupation/name of employer. Most of the contributor entries with missing information were either disclosed with the notation "Info Requested" or left blank on the Schedules A (Itemized Receipts) filed with the Commission.

During audit fieldwork, the Audit staff reviewed the receipt documents provided by JWFC to determine if it had utilized "best efforts" to obtain, maintain and submit the missing information. A JWFC representative explained that the list of contributors to whom the follow-up letters requesting the occupation/name of employer information were sent, was maintained electronically. That list was inadvertently destroyed when one of JWFC's computers "crashed." However, JWFC maintained a physical file for letters it received from the contributors who responded to its request for occupation/name of employer information. The Audit staff reviewed the available follow-up letters and determined that JWFC maintained records for 88 individuals who made, in aggregate, 106 contributions totaling \$111,860. Nevertheless, during audit fieldwork, JWFC did not submit that information, as required, in amended disclosure reports and therefore did not establish "best efforts."

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff discussed this matter with the JWFC representative and presented a list of 88 individuals for whom the occupation/name of employer information was available but not disclosed. The JWFC representative agreed to amend the reports to disclose the missing information.



The Interim Audit Report recommended that JWFC establish "best efforts" by amending its reports to disclose the missing information relating to the 106 contributions.

**C. Committee Response to the Interim Audit Report**

JWFC did not submit a response the Interim Audit Report, nor were amended reports filed. The Audit staff made several attempts to contact the JWFC representative but was unsuccessful.

**D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that JWFC establish "best efforts" by amending its reports to disclose the missing information relating to the 106 contributions.

**E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, JWFC stated that it made "best efforts" to collect information for all 285 contributions that lacked disclosure of occupation/name of employer. As having done so during fieldwork, JWFC re-emphasized its adherence to its established internal procedures by referring to a miscellaneous report filed previously with the Commission, detailing JWFC's procedures for issuing letters to collect the missing contributor information. JWFC further asserted that its physical file for letters received from contributors who responded to its request for occupation/name of employer information was evidence of its "best efforts" to collect the information from all contributors. JWFC again admitted that its electronic list was inadvertently destroyed when one of its computers "crashed" and it no longer had physical evidence of all letters sent to the remaining contributors. Subsequently, JWFC filed amended disclosure reports for 106 contributions totaling \$111,860 and materially complied with the Interim Audit Report recommendation. For these contributions, JWFC disclosed the required contributor information and established "best efforts" only after the audit.

**Commission Conclusion**

On November 6, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that during the period covered by the audit, JWFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$334,146 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions.

The Commission approved a finding that JWFC failed to disclose occupation/name of employer information for 106 contributions from individuals totaling \$111,860 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions. The Commission did not approve a finding for the remaining 179 contributions totaling \$222,286. As such, this matter is presented in the "Additional Issue" section.

## **Finding 2. Receipt of Contributions in Excess of the Limit**

### **Summary**

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any contributions exceeded the limit. This review indicated that JWFC received apparent excessive contributions from 29 individuals totaling \$92,325. These errors occurred as a result of JWFC not resolving the excessive portions of contributions by forwarding a presumptive letter to the contributor or issuing a refund in a timely manner. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC provided letters sent to contributors for contributions totaling \$60,125 that were eligible for presumptive redesignation/retribution. The Audit staff considers the \$60,125 as excessive contributions that have been resolved untimely. JWFC did not address the excessive contributions resolvable only by refund to contributors or the U.S. Treasury totaling \$21,200 nor did it file amended reports to disclose these contributions on Schedule D (Debts and Obligations).

The Commission approved a finding that JWFC received excessive contributions totaling \$92,325.

### **Legal Standard**

- A. Authorized Committee Limits.** For the 2012 election, an authorized committee may not receive more than a total of \$2,500 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §30116(a)(1)(A) and (f) (formerly 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f)); 11 CFR §§110.1(a) and (b) and 110.9(a).
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
  - Deposit the check into its federal account and:
    - Keep enough money in the account to cover all potential refunds;
    - Keep a written record explaining why the contribution may be illegal;
    - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
    - Seek a retribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of retribution and redesignation); and
    - If the committee does not receive a proper retribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership must include the signature of each contributor on

the check, money order, or other negotiable instrument or in a separate writing). A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

**D. Reattribution of Excessive Contributions.** The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(B).

**E. Redesignation of Excessive Contributions.** When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead.

### **Facts and Analysis**

#### **A. Facts**

During audit fieldwork, the Audit staff identified 29 individuals with apparent excessive contributions totaling \$92,325.

JWFC resolved \$11,000 of the excessive contributions by sending presumptive reattributions and/or redesignations letters that were untimely. An additional excessive total of \$60,125 could still be resolved, albeit untimely, via presumptive reattribution or redesignation letters being sent to the contributors. The remaining excessive contributions totaling \$21,200 appear resolvable only by refund to the contributors or disgorgement to the U.S. Treasury.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff informed the JWFC representative of this matter at the exit conference. The Audit staff provided schedules of the apparent excessive contributions along with the necessary actions to resolve them. The representative stated that she planned to review all excessive contributions and obtain the necessary documents. She also mentioned that she would contact the JWFC employees to inquire about the records and reasons the excessive contributions occurred.

Subsequent to the exit conference, the JWFC representative informed the Audit staff that, upon the receipt of the Interim Audit Report, the excessive contributions resolvable only by refund to the contributors (\$21,200) would be disclosed on JWFC's Schedule D (Debts and Obligations) since JWFC has no funds available to make such refunds. In addition, the JWFC representative provided a list of contributors, along with their addresses, to whom presumptive reattribution or redesignation letters were going to be sent.

The Interim Audit Report recommended that JWFC provide evidence that demonstrated that the contributions totaling \$92,325 were not excessive or that they were timely resolved. Absent such evidence, JWFC should have resolved these apparent excessive

contributions by either (1) sending notices for those contributions that were eligible for presumptive redesignation/retribution letters, informing contributors about how the excessive portion of their contributions was resolved and offering a refund, (2) refunding the excessive portion of each contribution that was not eligible for presumptive redesignation/retribution letters or making a payment to the U.S. Treasury and providing documentation or, (3) disclosing the contributions requiring refund on Schedule D if funds were not available to make the necessary refunds.

#### **C. Committee Response to the Interim Audit Report**

JWFC did not submit a response to the Interim Audit Report, nor were amended reports filed. The Audit staff made several attempts to contact the JWFC representative but was unsuccessful.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that JWFC received apparent excessive contributions totaling \$92,325. Of this amount, JWFC resolved \$11,000 previously by sending presumptive reattributions and/or redesignations letters that were untimely. Additional excessive contributions totaling \$60,125 could still be resolved in a similar manner, albeit untimely. The remaining excessive contributions totaling \$21,200 appear resolvable only by refund to the contributors or disgorgement to the U.S. Treasury.

#### **E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, JWFC stated that, according to its established procedures, it submitted presumptive retribution/redesignation letters to donors within one week of receipt of their contributions. Based on these procedures, JWFC presented letters previously sent to 29 contributors. However, these letters were not dated and JWFC was not able to locate the exact dates of submission to each contributor. In response to the Draft Final Audit Report, JWFC re-issued these letters on August 1, 2014, obtained contributors' signatures, as necessary, and untimely resolved excessive contributions totaling \$60,125. JWFC did not address the excessive contributions resolvable only by refund to contributors or the disgorgement to the U.S. Treasury totaling \$21,200, nor did JWFC file amended reports to disclose these contributions on Schedule D (Debts and Obligations).

#### **Commission Conclusion**

On November 6, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that JWFC received excessive contributions totaling \$92,325.<sup>5</sup>

The Commission approved the Audit staff's recommendation.

<sup>5</sup> This amount consists of excessive contributions resolved untimely (\$71,125) and excessive contributions resolvable only by a refund to contributors or disgorgement to the U.S. Treasury (\$21,200). \$92,325 = \$(71,125 + 21,200).

## Part V

### Additional Issue

#### **Disclosure of Occupation/Name of Employer - Best Efforts**

##### **Summary**

As detailed in Finding 1 above, the Audit staff's review of all contributions from individuals requiring itemization indicated that 285 contributions totaling \$334,146 lacked disclosure of occupation/name of employer. Furthermore, the Interim Audit Report stated that "best efforts" to obtain, maintain and submit information had not been sufficiently documented for these contributions. JWFC did not submit a response to the Interim Audit Report.

In response to the Draft Final Audit Report, JWFC filed amended disclosure reports for 106 contributions totaling \$111,860 and materially complied with the Interim Audit Report recommendation.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding relating to JWFC's "best efforts" for the remaining 179 contributions totaling \$222,286. Pursuant to Commission Directive 70,<sup>6</sup> this matter is discussed in the "Additional Issue" section.

##### **Legal Standard**

The legal standard in the Finding 1 above is incorporated herein.

##### **Facts and Analysis**

###### **A. Facts**

A review of all itemized contributions from individuals indicated that 285 contributions totaling \$334,146, or 29 percent of the dollar value of individual contributions required to be itemized by JWFC, lacked disclosure of occupation/name of employer. Most of the contributor entries with missing information were either disclosed with the notation "Info Requested" or left blank on the Schedules A (Itemized Receipts) filed with the Commission.

During audit fieldwork, the Audit staff reviewed the receipt documents provided by JWFC to determine if it had utilized "best efforts" to obtain, maintain and submit the missing information. A JWFC representative explained that the list of contributors to whom the follow-up letters requesting the occupation/name of employer information were sent, was maintained electronically. That list was inadvertently destroyed when one of JWFC's computers "crashed."

<sup>6</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf)

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff discussed this matter with the JWFC representative and presented a list of 88 individuals for whom the occupation/name of employer information was available but not disclosed. The JWFC representative agreed to amend the reports to disclose the missing information.

The Interim Audit Report recommended that JWFC establish "best efforts" by amending its reports to disclose the missing information relating to the 106 contributions.

#### **C. Committee Response to the Interim Audit Report**

JWFC did not submit a response to the Interim Audit Report, nor were amended reports filed. The Audit staff made several attempts to contact the JWFC representative but was unsuccessful.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report reiterated that JWFC establish "best efforts" by amending its reports to disclose the missing information relating to the 106 contributions.

#### **E. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, JWFC stated that it made "best efforts" to collect information for all 285 contributions that lacked disclosure of occupation/name of employer. As having done so during fieldwork, JWFC re-emphasized its adherence to its established internal procedures by referring to a miscellaneous report filed previously with the Commission, detailing JWFC's procedures for issuing letters to collect the missing contributor information. JWFC further asserted that its physical file for letters received from contributors who responded to its request for occupation/name of employer information was evidence of its "best efforts" to collect the information from all contributors. JWFC again admitted that its electronic list was inadvertently destroyed when one of its computers "crashed" and it no longer had physical evidence of all letters sent to the remaining contributors.

#### **Commission Conclusion**

On November 6, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that during the period covered by the audit, JWFC failed to disclose occupation/name of employer information for contributions from individuals totaling \$334,146 and did not demonstrate "best efforts" to obtain, maintain, and submit disclosure information with respect to these contributions.

The Commission did not approve by the required four votes the portion of the Audit staff's recommended finding relating to JWFC's failure to demonstrate "best efforts" for 179 contributions totaling \$222,286. Some Commissioners voted to approve the Audit Division's recommendation for a finding in the amount of \$334,146. Others did not, taking the position that the existence of written procedures, a form letter requesting additional information from contributors, and examples of actual responses from some contributors were sufficient to demonstrate "best efforts" for all the contributors.

Pursuant to Commission Directive 70, this matter is presented as an "Additional Issue."